

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

CHRISTOPHER JAY GRISWOLD)	
and KAREN SABRINA)	
GRISWOLD, as)	
co-administrators and)	
co-personal)	
representatives of Austin)	
Griswold's estate,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	2:20cv149-MHT
)	(WO)
ALABAMA POWER COMPANY,)	
)	
Defendant.)	

ORDER

Upon review of the pending motion to dismiss, it came to the court's attention that the allegations of the plaintiffs' complaint are insufficient to invoke this court's diversity-of-citizenship jurisdiction. To invoke original jurisdiction based on diversity, the complaint must distinctly and affirmatively allege each party's citizenship. See *McGovern v. American Airlines, Inc.*, 511 F. 2d 653, 654 (5th Cir. 1975) (per

curiam).^{*} The allegations must show that the citizenship of each plaintiff is different from that of each defendant. See 28 U.S.C. § 1332; see also 2 James Wm. Moore, et al., *Moore's Federal Practice* § 8.03[5][b] at 8-16 (3d ed. 2006).

The plaintiffs' complaint fails to meet this standard. The plaintiffs have sued in their capacity as personal representatives for the estate of the decedent. "[T]he legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent" 28 U.S.C. § 1332(c)(2). An allegation that a party is a "resident" of a State is not sufficient to establish that a party is a "citizen" of that State. See *Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) ("Residence alone is not enough.") (citation

* In *Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

omitted); *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994) ("Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person."). Because the complaint sets forth the "residence" rather than the "citizenship" of decedent Austin Griswold, it does not adequately establish the ground for this court to assume jurisdiction of this matter.

As jurisdiction has not been properly pleaded, the court will deny the motion to dismiss without prejudice and with leave to renew.

It is therefore the ORDER, JUDGMENT, and DECREE of the court that the plaintiffs have until September 28, 2021, to amend the complaint to allege jurisdiction sufficiently; otherwise this lawsuit shall be dismissed without prejudice.

It is further ORDERED that the motion to dismiss

(Doc. 18) is denied without prejudice and with leave to renew by two weeks after the date of the filing of the amended complaint.

DONE, this the 14th day of September, 2021.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE